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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

SHARLINE KRAUSE, individually and on
behalf of all statutory beneficiaries of DREY
KRAUSE, deceased,

Plaintiff,

v.

MOHAVE COUNTY, ARIZONA; MOHAVE
COUNTY SHERIFF DOUGLAS SCHUSTER
AND CYNTHIA SCHUSTER; JORDAN T.
SELMANSON; ASHLEY N. SELMANSON;
RICHARD SCHILLER; KATHLEEN
SCHILLER,

Defendants.

NO. 3:17-cv-08185-PCT-JJT

**Defendants' Response to Motion of
Ryan Andrew Krause to Intervene**

The Motion to Intervene by statutory wrongful death beneficiary Ryan Andrew Krause ("Beneficiary Krause") should be denied. Beneficiary Krause's sole request is to be represented by counsel with regard to the wrongful death claim brought by Plaintiff Sharline Krause. However, as explained below, in a lawsuit brought under the Arizona Wrongful Death Statute, A.R.S. §12-612, statutory beneficiaries are already considered parties to the litigation and may participate in the portion of the litigation pertaining to the determination of damages.

1 **I. STATUTORY BENEFICIARIES ARE CONSIDERED PARTIES UNDER**
 2 **THE WRONGFUL DEATH STATUTE.**

3 Under Arizona's wrongful death statute, claims by all statutory beneficiaries
 4 are consolidated in a single action brought by a designated plaintiff for and on behalf of
 5 the statutory beneficiaries to obtain compensation for their loss resulting from the victim's
 6 death. *Wilmot v. Wilmot*, 203 Ariz. 565, 569, 58 P.3d 507, 511 (2002). Under Arizona
 7 law, an action brought pursuant to A.R.S. § 12-612 involves only "one plaintiff and one
 8 judgment."

9 Statutory beneficiaries are, however, considered parties to the wrongful
 10 death lawsuit on the issue of damages. See *Austin v. City of Scottsdale*, 140 Ariz. 579,
 11 580-81, 684 P.2d 151, 152-53 (1984) ("That children are not named plaintiffs but are
 12 merely beneficiaries does not preclude them from being 'parties' to the litigation.");
 13 A.R.S. 12-613 (discussing the apportionment of damages among the "surviving parties").
 14 The Arizona Court of Appeals in *Williams* explained the permissible role of a statutory
 15 beneficiary who retains counsel to participate in a wrongful death lawsuit brought by
 16 another plaintiff. *Williams v. Superior Court In & For County of Maricopa*, 169 Ariz.
 17 468, 470, 820 P.2d 332, 334 (App. 1991). Under the statutory framework, the statutory
 18 beneficiary "cannot be the party who seeks to establish the defendant's liability." *Id.* The
 19 statutory beneficiary does have the right, however, to:

- 20 (1) attend depositions on liability, but not participate; and
- 21 (2) participate in all aspects of litigation regarding that beneficiary's claim
 22 of damages.

23 *Id.*

24 This wrongful death lawsuit was brought by the decedent's mother, Sharline
 25 Krause, on behalf of all statutory beneficiaries of the decedent. Mrs. Krause is the sole
 26 statutory plaintiff in the litigation and the only individual allowed to litigate the issue of
 27 liability. Beneficiary Krause cites his concern that Plaintiff has undervalued his damages
 28 claim as the basis for his motion. Under the existing framework, however, Beneficiary

Krause has the ability to be represented by counsel and litigate the issue of his damages. *Id.* at 469. It is not necessary for him to intervene to do so.

II. THE MOTION TO INTERVENE SHOULD BE DENIED.

Beneficiary Krause claims his request is subject to the mandatory intervention provision of Fed. R. Civ. P. 24(a)(2). As set forth above, he is already a party with a right to participate in the litigation, albeit in the damages phase of the litigation only. He has also failed to show that he is entitled to intervene under the rule.

Under Fed. R. Civ. P. 24(a)(2), the court must grant a motion to intervene by a person who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.” Beneficiary Krause has not shown that the existing statutory Plaintiff cannot adequately protect his interests in the liability phase or otherwise.

Where an applicant for intervention and an existing party “have the same ultimate objective, a presumption of adequacy of representation arises.” *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 838 (9th Cir. 1996), *as amended on denial of reh'g* (May 30, 1996). As the *Williams* court recognized, Plaintiff and Beneficiary Krause share the same interest: namely to establish the defendant's liability. *Williams*, 169 Ariz. At 470, 820 P.2d at 334. Further, Plaintiff has a fiduciary duty “to protect the rights and interests of all beneficiaries who seek or may seek to assert their claims.” *Wilmot*, 203 Ariz. at 574 ¶ 34.

In this case, as in most wrongful death cases, the statutory plaintiff is both a beneficiary and acts as a fiduciary of the other beneficiaries. *Id.* at 569, ¶ 13. Beneficiary Krause asserts that the settlement offer in the Notice of Claim shows that his interests are not adequately protected by Plaintiff, but does not explain how an offer to settle at the Notice of Claim stage demonstrates that the Plaintiff will not fully protect his interests in the litigation. And because Beneficiary Krause already has a right to litigate and be

1 represented by counsel on the issue of damages, intervention is neither required, nor
2 necessary.

3 **CONCLUSION**

4 Defendants request that Ryan Krause's Motion to Intervene be denied.
5 Defendants further request that the court enter an order clarifying that counsel for
6 Beneficiary Krause may appear on his behalf for the limited purposes of litigating issues
7 pertaining to his claim of damages, and attending and observing depositions on issues of
8 liability, provided that he does not participate in the liability phase of the litigation.

9 DATED this 9th day of November 2017.

10 JONES, SKELTON & HOCHULI, P.L.C.

11
12 By/s/Ravi V. Patel

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18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on this 9th day of November 2017, I caused the
20 foregoing document to be filed electronically with the Clerk of Court through the
21 CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF
22 system.

23 /s/Victoria G. Wells
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